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REMARKS

In the Office Action, the Examiner rejected the claims under 35 USC §103. Claims 1-35 remain pending. The rejections are fully traversed below.

Reconsideration of the application is respectfully requested based on the following remarks.

REJECTION OF CLAIMS UNDER 35 USC §103

In the Office Action, the Examiner rejected claims 1-6, 22-24, 26-27, and 32-35 under 35 USC §103 as being unpatentable over Cloonan Patent No. 2002/0066110 A1, ('Cloonan' hereinafter) in view of Heiken JR., Patent No. 2003/0141971 A1, ('Heiken' hereinafter).

Cloonan discloses a cable modem termination system (CMTS), which reduces the time required to switch over traffic from a failed circuit to a back up circuit. FIG. 1 shows a single CMTS. As shown and described with reference to FIG. 2, the CMTS includes a number of cable interface cards. If a fault is discovered on one of the active cable interface cards, then the protection switch can re-route the traffic using the spare cable interface card. See paragraph [0028].

Cloonan discloses a single CMTS. As set forth above, Cloonan relates to the failure of a circuit within a CMTS and the copying of parameters from an active circuit into a spare circuit. Even if the Cloonan is interpreted to include a backup CMTS (e.g., spare circuit) and an active

CMTS (e.g., active circuit), there is no indication that the parameters that are copied include subscriber information. More particularly, with respect to claim 1, Cloonan neither discloses nor suggests receiving by a backup cable modem termination system subscriber information associated with one or more cable modems from an active cable modem termination system. Moreover, while the Examiner cites paragraphs 14 and 32, these portions of Cloonan fail to disclose or suggest prioritizing cable modems in any manner. Thus, Applicant respectfully submits that Cloonan fails to disclose or suggest prioritizing by a backup cable modem termination system the cable modems using at least one of the subscriber information or a time of receipt of the subscriber information, the prioritized cable modems indicating an order in which the transmission of messages between the one or more cable modems and the backup cable modem termination system is to be restored. Applicant also respectfully submits Cloonan also fails to disclose the polling of cable modems in any manner. It follows that Cloonan fails to disclose or suggest a backup cable modem termination system polling the cable modems in the order indicated by the prioritized cable modems, thereby enabling the transmission of messages between the one or more cable modems and the backup cable modem termination system to be restored.

The Examiner admits that Cloonan fails to teach "wherein receiving, prioritizing and polling by the backup cable modem termination system." The Examiner seeks to cure the deficiencies of Cloonan with Heiken.

The Examiner cites page 3, paragraph 24 and page 5, paragraph 37 of Heiken. Paragraph [0024] of Heiken discloses:

Upon subscription to EEINS, the subscriber would create an account with the central server 21. Typically the account would be accessed using a user identification name or number and a password, to ensure that only the actual subscriber would have access to their account on the central server 21. The subscriber may also pre-set some of the elements within the

notification report to provide defaults in order to speed the reporting process during an actual emergency incident.

Paragraph [0037] of Heiken discloses:

Obviously, given the important nature of the notification services, backup systems and redundancy will be important to ensure smooth operation. This includes a backup power source for the central server 21, one or more back-up means for receiving data from the industrial subscribers, and one or more back-up means for transmitting the data to the receiving agencies. Such back-up communications means may include dial-up modems, facsimile transmissions, or telephones. Furthermore, in order to ensure that the primary Internet communications means is available and functioning, the central server 21...may periodically check to verify that the receiving nodes 31 at the various agencies are on-line and ready to receive transmissions. If a receiving node 31 is not on-line at the time of an incident, or if the receiving node 31 does not acknowledge receipt of the incident report, then the central server 21 will automatically utilize a back-up means to communicate data about the incident to that receiving agency.

In summary, Heiken relates to an electronic emergency incident notification system, which allows subscribers to transmit notification of a nuclear/chemical/biological release to a central server for transmittal to the appropriate governmental agencies. See title and abstract. It is important to note that Heiken neither discloses an active cable modem termination system (CMTS) or a backup CMTS. In fact, Heiken discloses the use of a single server. Although Heiken refers to a "backup system," Heiken merely discloses the use of a backup power source for the central server. In addition, although Heiken refers to a "back-up means for receiving data" and a "back-up means for transmitting data," it is important to note that these "backup-up communications include other communication mechanisms such as phones and facsimiles, rather than communication via a network such as the Internet. Moreover, the back-up means for receiving data receives data from subscribers. Heiken neither discloses nor suggests a backup

CMTS receiving subscriber information from an active CMTS. Moreover, Heiken fails to disclose or suggest prioritizing cable modems in any manner, and therefore fails to disclose or suggest prioritizing cable modems by a backup CMTS, as claimed. Furthermore, although Heiken discloses verifying that the receiving nodes at the various agencies are on-line and ready to receive transmissions, Heiken fails to disclose or suggest the polling of cable modems in the prioritized order (by a backup CMTS or otherwise).

Neither of the cited references, separately or in combination, discloses or suggests communication between an active CMTS and a backup CMTS in the manner claimed. As a result, neither of the cited references, separately or in combination, discloses or suggests prioritizing cable modems by a backup CMTS, or polling the prioritized cable modems by a backup CMTS. In view of the above, the combination of the cited references would fail to operate as claimed.

In the Office Action, the Examiner rejected claims 7-21, 25, and 28-29 under 35 USC §103 as being unpatentable over Cloonan in view of Heiken and further in view of Gummalla, U.S. Patent Number 6,999,414 B2, ('Gummalla' hereinafter) This rejection is fully traversed below.

Applicant respectfully submits that Gummalla fails to cure the deficiencies of the primary references. It is also important to note that Gummalla relates to the combining requests for data bandwidth by a data provider for transmission of data. See title. The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Cloonan in view of Gummalla to increase the efficiency of providing requested bandwidth data. The Examiner further asserts that "one would be motivated to do so to distribution data from the

CMTS to the cable modem." However, it is important to note that the claimed invention does not directly relate to the distribution of data, but rather the establishing of communication between a backup CMTS and one or more cable modems. Thus, even if the references were combined, they would fail to achieve the desired result, which is to restore communication between a backup CMTS and one or more cable modems upon failure of an active CMTS. Accordingly, Applicant respectfully submits that claims 7-21, 25, and 28-29 are patentable over the cited references.

The Examiner rejected claims 30-31 under 35 USC §103 as being unpatentable over Cloonan in view of Heiken and further in view of Burroughs, U.S. Pub. No. 2002/0144284 A1, ('Burroughs' hereinafter). This rejection is fully traversed below.

The Examiner seeks to cure the deficiencies of Cloonan and Heiken with Burroughs. However, Burroughs fails to cure the deficiencies of the primary references.

Burroughs discloses arranging cable modems and CMTS modules, connected to a single cable so as to provide cable modem service to a respective set of the cable modems, are arranged so one of the CMTSs can backup the other. Each of the CMTSs simultaneously broadcasts its downstream channel on its own assigned one of the cable channels that is accessible by the cable modems for which it is assigned to provide the primary downstream channel, and each cable modem is assigned in addition to its primary downstream channel at least one alternative downstream channel which is supplied by a CMTS other than its primary CMTS, so that when the primary downstream channel of a cable modem becomes invalid the cable modem switches to the alternative downstream channel. See Abstract.

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It is important to note that Burroughs requires that the cable modem provide parameters to the CMTS. See page 5, paragraph 48. More particularly, Burroughs discloses the transmission of a registration request message from a cable modem to the CMTS. See page 4, paragraph 37. This process is performed when the cable modem determines that the primary downstream channel is not valid. See page 3, paragraph 32. As a result, the intelligence (e.g., switching to a downstream channel) is implemented in the cable modem rather than the CMTS. Burroughs fails to disclose or suggest communication between two different CMTSs.

Moreover, Burroughs requires that the cable modems actively switch to a backup CMTS, as well as provide parameters to their backup CMTS. As a result, Burroughs teaches away from communicating between a backup CMTS and an active CMTS. Moreover, since the cable modems actively initiate communication with their backup CMTS, it would be unnecessary for the backup CMTS to prioritize the order in which communication with the cable modems should be established. Similarly, it would be unnecessary for the backup CMTS to poll the cable modems to establish communication. As such, Applicant respectfully submits that Burroughs teaches away from the claimed invention. Accordingly, Applicant respectfully submits that claims 30-31 are patentable over the cited references.

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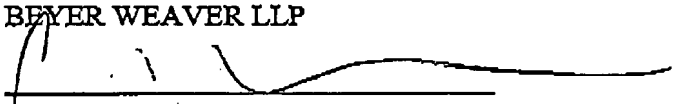
SUMMARY

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. CISCP251).

Respectfully submitted,

BEYER WEAVER LLP



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